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No. 95-1918

Supreme Court, U. S.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

STATE OF ARKANSAS, PETITIONER

v.

**FARM CREDIT SERVICES OF CENTRAL ARKANSAS,
PCA; FARM CREDIT SERVICES OF WESTERN
ARKANSAS, PCA; EASTERN ARKANSAS
PRODUCTION CREDIT ASSOCIATION; and
DELTAPRODUCTION CREDIT ASSOCIATION**

RESPONDENTS

***ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT***

**REPLY BRIEF FOR
THE PETITIONER**

**MARTHA G. HUNT, AR Bar No. 87090
Attorney, Revenue Legal Counsel
Arkansas Department of
Finance and Administration
Seventh and Wolfe Streets
P. O. Box 1272, Room 209
Little Rock, AR 72203
(501) 682-7030**

Counsel of Record for Petitioner

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ARGUMENT

Although created by Congress and designated "federal instrumentalities," Production Credit Associations do not possess sufficient governmental attributes to entitle them to either the United States' exemption from the bar of the Tax Injunction Act or to implied immunity from state taxation.

The function of PCAs is not synonymous with the possible governmental function performed by the Farm Credit System, as a whole.

Respondents assert that the Farm Credit System performs an important governmental role. *Brief of Respondents*, at 6, 8. Whether or not the Farm Credit System can "stand in the shoes of the Government" is not at issue here.¹ Respondents further imply that any governmental functions performed by the Farm Credit System, as a whole, may be imputed to PCAs. PCAs are not synonymous with the Farm Credit System, nor are they equivalent to the other institutions in the System.

The Farm Credit System is a government sponsored enterprise comprised of the various banks, associations, and other entities. The Farm Credit Administration promulgates regulations to implement the Farm Credit Act of 1971, as amended, and examines System institutions for compliance with the Act and with sound banking practices. The three members of the Farm Credit Administration Board are nominated by the President and confirmed by the Senate. The Farm Credit Administration issues assessments to the institutions it examines and regulates for payment of the expenses of administra-

¹ Noticeably absent from the action begun by the PCAs, in addition to the United States, is the Farm Credit Administration, among the offices of which is that of General Counsel, whose responsibility is to interpret the Farm Credit Act. 12 CFR § 600.5.

tion. No federally appropriated funds or taxpayer funds are used to pay for regulatory oversight of System institutions. 12 CFR § 600 et seq.

The Farm Credit System includes Farm Credit Banks, the Federal land bank associations, production credit associations, and the banks for cooperatives. 12 U.S.C. § 2002. Farm Credit Banks are formed by the mergers of District Federal Intermediate Credit Banks with Federal Land Banks. 12 U.S.C. § 2011. The Farm Credit Banks are authorized to make or participate in long term loans, including rural real estate mortgage loans. 12 U.S.C. § 2015. The banks for cooperatives lend to eligible cooperative associations in the System. 12 U.S.C. § 2128.

Production Credit Associations are authorized to fund short term and intermediate loans, such as crop operating expenses and equipment purchases. 12 U.S.C. § 2076. The funds for loans made by any of the Farm Credit lending entities are raised through the sale of Farm Credit bonds and notes in the national money markets. These funds are distributed to the Farm Credit Banks for lending and allocation to the PCAs and other associations to lend to their borrowers. This channeling of funds removes the PCAs yet another step from the System, making an analogy of the governmental function of the System to that of the PCAs even less applicable.

PCAs are organized and function like private corporations.

PCAs possess general corporate powers including the ability to hold property, borrow and loan money, prescribe bylaws, and be governed by a board of directors. 12 U.S.C. § 2073. As members of cooperative associations, the borrowers purchase voting stock in the association, giving them the right, as shareholders, to participate in the election of

directors and vote on issues affecting the association. 12 U.S.C. § 2072. The President exercises no authority over PCAs, comparable to the authority to appoint members to the Farm Credit Administration Board. The profits of the association inure to the benefit of the shareholder-borrowers on a patronage basis. 12 U.S.C. § 2074.

Government corporations, for purposes of the Government Corporation Control Act, include various System entities, including the Central Bank for Cooperatives, the Federal Intermediate Credit Banks, the Federal Land Banks, and the Regional Banks for Cooperatives. 31 U.S.C. § 9101. PCAs are not listed as government corporations for purposes of 31 U.S.C. § 9101.

Although PCAs are regulated by the Farm Credit Administration, this regulation is not unlike that of banks and other nongovernmental entities.

Prior to the 1985 amendments, the Farm Credit lending entities had not been subject to systematic examination. The regulatory authority provided in the 1985 amendments included regular examinations of the lending entities for the protection of the borrowers as well as the System. H.R. Rep. No. 425, 99th Cong., 1st Sess. reprinted in 1985 U.S. Code Cong. & Admin. News 2587, 2598. Government regulation of PCAs may be compared to that of any other lending institution, whether outside the Farm Credit System or within the System, which provides for examination of the entity to ensure the safety of the money market.

PCAs are not fiscal arms of the government.

None of the Farm Credit institutions receive funding from the federal government. The Farm Credit Banks and the Banks for Cooperatives obtain the majority of their loan funds through the sale of debt securities. These debt securi-

ties are not obligations of, nor are they guaranteed by, the United States or any agency or instrumentality thereof, other than the Farm Credit System banks. The last of the four Farm Credit Banks which received direct financial assistance through the Agricultural Credit Act of 1987 repaid the last of this debt in 1994. Farm Credit Administration Annual Report 1994.

Federal reserve banks have been referred to as fiscal arms of the government. *Federal Reserve Bank of Boston v. Commissioner of Corporations and Taxation*, 499 F.2d 60 (CA1 1974). Unlike PCAs, they are depositories of money held in the U.S. Treasury and, after payment of expenses and a statutory dividend on member banks' stock, return the balance of their earnings to the Treasury.

The 1985 amendment to 12 U.S.C. § 2077 did not confer upon the Production Credit Associations the broad immunity from state taxation as interpreted by the Eighth Circuit.

Respondents imply that Congress decided in 1985 to eliminate the then existing specific waiver of the PCAs' immunity from state taxation in the expectation of renewed federal investment in the System. Brief of Respondents, at 35.

What Congress actually provided in 1985 was discretionary authority to the Treasury to purchase obligations of the Farm Credit System Capital Corporation as a "safety net" for the System. This discretion would be available only if the Secretary of the Treasury determined that aid was necessary, following the System self help measures provided in the legislation. In the House Debate on H.R. 3792 on December 10, 1985, members stated that the drafters of H.R. 3792 rejected the idea of direct Federal funding of the Farm Credit System. The debate further reflected that the bill was not intended as a bailout, comparable to those for Chrysler and New York

City, 131 Cong. Rec. H. 35564; 35575-76 (December 10, 1985).

Although Respondents disagree, *Brief of Respondents* at 36, the amendment to Section 2077 was clearly provided in a section of "Technical and Conforming Amendments" in which there are approximately thirty-eight amendments which either strike out the word "Governor" entirely or strike it and replace it with the words "Farm Credit Administration." Pub.L. 92-181, Title II, Part B, § 2.17, 85 Stat. 602. Although these are not the only amendments in this section, it is apparent that the primary intent of the section is to conform the legislative language to the amendment's replacement of the "Governor" with the "Farm Credit Administration."

Had it been Congress' intent, as urged by Respondents, to restore total tax immunity to PCAs following the retirement of the Government stock in PCAs, this would have been easily achieved by striking out only the last sentence of section 2.17, which read:

The exemption provided in the preceding sentence shall apply only for any year or part thereof in which stock in the production credit association is held by the Governor of the Farm Credit Administration.

Farm Credit Act of 1971, Pub. L. No. 92-181, § 2.17, 95 Stat. 583, 602 (1971), and leaving the immediately preceding sentence providing the broad exemption from tax for the association, its property, franchises, capital, reserves, surplus and other funds and income.

By striking the waiver of the exemption and leaving the exemption, Congress could have unquestionably provided the exemption now desired by Respondents.²

The "plain language" of 12 U.S.C. § 2077, as amended, exempts only the obligations issued by Production Credit Associations, not the associations themselves. Presumably, at the time of the amendment Congress was aware that the Government stock in PCAs had been retired in the 1960's, at which time PCAs began paying tax. The statute, as amended, is consistent with the tax treatment of PCAs at the time of the amendment.

² A substantial number of other statutes provide a similar broad exemption of the entity, as well as its obligations, from taxation. Some of the entities such as Farm Credit Banks (12 U.S.C. § 2023), Federal Land Bank Associations (12 U.S.C. § 2098), the Farm Credit System Insurance Corporation (12 U.S.C. § 2277a-12), and the Farm Credit System Assistance Board (12 U.S.C. § 2278a-11) are Farm Credit entities. Many other entities have a similar broad exemption, including GNMA (12 U.S.C. § 1723a), Federal credit unions (12 U.S.C. § 1768), Federal Financing Bank (12 U.S.C. § 2290), National Consumer Cooperative Bank (12 U.S.C. § 3019) and SIPC (15 U.S.C. § 78kkk).

CONCLUSION

The decision of the Court of Appeals for the Eighth Circuit should be vacated.

Respectfully submitted,
 MARTHA G. HUNT, AR Bar No. 87090
 Attorney, Revenue Legal Counsel
 Arkansas Department of
 Finance and Administration
 Seventh and Wolfe Streets
 P. O. Box 1272, Room 209
 Little Rock, AR 72203
 (501) 682-7030

Counsel of Record for Petitioner

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